



Sedgwick County  
Register of Deeds - Bill Meek  
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Recording Fee: \$40.00  
Authorized By: 

Date Recorded: 11/10/2010 12:59:28 PM



Grantor KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Grantee WICHITA CITY OF

Type of Document AGREEMENT OR COVENANT

Recording Fees \$40.00

Mtg Reg Tax \$0.00

Total Amount \$40.00

Return Address WICHITA CITY OF

ATTN: GAIL WILLIAMS

455 N. MAIN 8TH FLR

WICHITA, KS 67202

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**DOCUMENT NUMBER:** 10-EUC-0005  
**PROJECT NUMBER:** C2-087-00047  
**PROPERTY CATEGORY:** 1

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## **ENVIRONMENTAL USE CONTROL AGREEMENT**

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**City of Wichita**, having a mailing address of 1900 East 9<sup>th</sup> Street, Wichita, Kansas 67214, hereinafter referred to as "the Owner", is the owner of real property known as the Johns' Sludge Pond Site, in the County of Sedgwick, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal description:

**All that part of the NW corner of the NW¼ of Section 3, Township 27 South, Range 1 East lying north of the Missouri Pacific Railroad right-of-way.**

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

**In the 1950's and 1960's, the Property was used by the Super Refined Oil Company (also known as Johns' Refinery) for the disposal of waste oil and oily sludge generated in its recycling/reclamation of motor oil and other oils at Johns' Refinery, located approximately 1.5 miles southwest of the Property. The recycling process used sulfuric acid and clay to precipitate and adsorb contaminants from the oil, thereby creating acidic sludge containing elevated levels of lead. Polychlorinated biphenyls (PCBs) were introduced into the sludge through the recycling of dielectric fluids. The disposal cell contained an estimated 15,000 cubic yards of oily sludge prior to cleanup. In 1970, Johns' Refinery went out of business. The United States Environmental Protection Agency (EPA), Region VII placed the Property on the National Priorities List (NPL) on September 8, 1983.**

**In 1986, the City of Wichita completed a cleanup at the Property which consisted of removal of contaminated sludge from the disposal cell and stockpiling on adjacent ground surface, installation of a clay liner in the bottom of the disposal cell, solidifying the stockpiled sludge with cement kiln dust, re-depositing the solidified sludge in the**

DOCUMENT	PROJECT	PROPERTY
NUMBER: 10-EUC-0005	NUMBER: C2-087-00047	CATEGORY: 1

lined disposal cell, constructing a compacted clay cap over the sludge and on the sidewalls of the disposal cell, installation of a soil cover over the clay cap with seeding to vegetation, and construction of a fence to restrict access. Post-closure groundwater, sediment, and surface water monitoring have been conducted semi-annually since 1986. Institutional controls were implemented through a restrictive covenant filed on the Property on February 27, 1987 to restrict land use. The Property was delisted from the NPL on January 6, 1992.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 1 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Sedgwick County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

#### **RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:**

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium, or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.

DOCUMENT NUMBER:	PROJECT NUMBER:	PROPERTY CATEGORY:
10-EUC-0005	C2-087-00047	1

- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- D. The Owner shall allow no operations or uses on the Property that will or likely will penetrate the surface cover or jeopardize the protective structure's functional integrity, including without limitation, excavation, drilling, scraping, or erosion.
- E. Soils and waste material stored at the Property shall not be excavated, removed, or otherwise disturbed in any manner unless prior authorization is granted in writing by KDHE.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.
- H. The Owner shall obtain prior written authorization from KDHE before undertaking any of the following:
  - 1. Performing work on any monitoring devices or systems on the Property except for routine maintenance and emergency maintenance, in which case KDHE shall be notified of such maintenance as soon as is practicable;
  - 2. Constructing any structures on the Property, permanent or otherwise;
  - 3. Changing the surface contour of the Property, drainage patterns or performing dirt work thereon;
  - 4. Producing food chain crops on the Property;
  - 5. Altering the vegetation grown on the Property in a manner inconsistent with routine management practices; or
  - 6. Removing any fences, signs or devices installed to restrict public access to the Property.
- I. The Owner shall restrict public access to the Property through posting of signs, fences, or by other physical structures or notices.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 10-EUC-0005	NUMBER: C2-087-00047	CATEGORY: 1

#### **LOCAL ORDINANCES AND ZONING:**

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

**The Property is zoned General Industrial by the City of Wichita.**

#### **ACCESS:**

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

#### **FUNDING:**

The Owner hereby agrees to submit to KDHE a one-time payment of \$2,000 to compensate KDHE for costs incurred to perform inspections, monitoring, and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, frequency of KDHE's anticipated inspections and anticipated inspection costs.

#### **DURATION:**

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

DOCUMENT	PROJECT	PROPERTY
NUMBER: 10-EUC-0005	NUMBER: C2-087-00047	CATEGORY: 1

### MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring, currently overseen by EPA Region VII and KDHE, is conducted according to the *Post-Closure Monitoring Plan* (October 1986) per EPA's *Record of Decision* (September 1989), which is incorporated herein by reference, as specified and modified in subsequent *Five-Year Review Reports*.

The Owner shall visually inspect the integrity of the protective structure and associated features according to the *Post-Closure Monitoring Plan* per EPA's *Record of Decision* (September 1989), which is incorporated herein by reference, as specified and modified in subsequent *Five-Year Review Reports*.

### MAINTENANCE REQUIREMENTS:

The Owner hereby agrees to provide post-construction maintenance of the protective structure according to the *Post-Closure Monitoring Plan* per EPA's *Record of Decision* (September 1989), which is incorporated herein by reference, as specified and modified in subsequent *Five-Year Review Reports*.

### OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner, with prior notification to KDHE, hereby agrees to obtain and record with this Agreement an updated, accurate legal description or legal survey of the Property should the adjacent Missouri Pacific Railroad right-of-way be removed or abandoned.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other

DOCUMENT	PROJECT	PROPERTY
NUMBER: 10-EUC-0005	NUMBER: C2-087-00047	CATEGORY: 1

common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Sedgwick County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

#### ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

#### EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Sedgwick County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

<b>DOCUMENT</b>	<b>PROJECT</b>	<b>PROPERTY</b>
<b>NUMBER: 10-EUC-0005</b>	<b>NUMBER: C2-087-00047</b>	<b>CATEGORY: 1</b>

IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 6th day of October, 2010.

**Kansas Department of Health and Environment**

By: [Signature]  
Roderick L. Bremby, Secretary

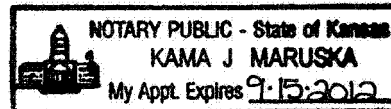
**ACKNOWLEDGMENT:**

STATE OF KANSAS            )  
  )ss:  
COUNTY OF SHAWNEE    )

BE IT REMEMBERED, on this 6th day of October, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

Kama J. Maruska  
Notary Public in and for said County and State



My Term Expires: September 15, 2012



<b>DOCUMENT</b>	<b>PROJECT</b>	<b>PROPERTY</b>
<b>NUMBER:</b> 10-EUC-0005	<b>NUMBER:</b> C2-087-00047	<b>CATEGORY:</b> 1

**Municipality: City of Wichita**

By: James T. Hays

Date: 11-8-10

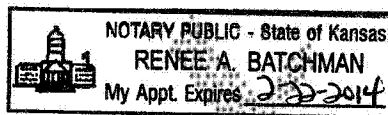
Print Name: Joseph T. Pajor

Title: Interim Director of Public Works

### ACKNOWLEDGMENT:

STATE OF Kansas )

COUNTY OF Sedgewick ) ss:



BE IT REMEMBERED, on this 8<sup>th</sup> day of November, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Joseph T. Pajor, authorized representative of the City of Wichita, who is personally known to be such person who executed the above document on behalf of said municipality, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Sedgwick County, Kansas, the day and year last written above.

Rene A. Bell  
Notary Public in and for said County and State

Notary Public in and for said County and State

My Term Expires: 2-22-2014